

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 EMMANUEL ONG, Individually and on
12 behalf of all others similarly situated,

13 Plaintiff,

14 v.

15 KITSAP RESIDENCES,

16 Defendant.

17 CASE NO. 3:22-cv-05095-DGE
18 ORDER ON JOINT MOTION FOR
19 COURT APPROVAL OF
20 SETTLEMENT AND DISMISSAL
21 WITH PREJUDICE (DKT. NO. 17)

22 This matter comes before the Court on the parties' Joint Motion for Court Approval of
23 Settlement and Dismissal of Complaint with Prejudice (Dkt. No. 17). For the reasons discussed
24 herein, the Court DENIES the parties' joint motion without prejudice to Plaintiff's ability to
25 voluntarily dismiss this action.

26 On February 16, 2022, Plaintiff filed a collective action suit against Defendant Kitsap
27 Residences pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, *et seq.* (Dkt.
28 No. 1.) Plaintiff has not, at present, moved for conditional class certification pursuant to 29
29 U.S.C. § 216(b).

In their joint stipulated motion, the parties ask the Court to enter an order approving their settlement after scrutinizing it for fairness, in accord with *Lynn's Food Stores, Inc. v. United States*, 679 F.2d 1350, 1352-53 (11th Cir. 1982). (Dkt. No. 17 at 3.) The Eleventh Circuit has also extended its *Lynn's Food* rule to require court scrutiny of individual settlement of FLSA wage claims. See *Nall v. Mal-Motels, Inc.*, 723 F.3d 1304, 1307 (11th Cir. 2013). The Ninth Circuit has not adopted the rule articulated in *Lynn's Food*, see *Wilson v. Maxim Healthcare Servs., Inc.*, No. C14-789RSL, 2017 WL 2988289, at *1 (W.D. Wash. June 20, 2017), and we decline to do so here. Though other courts in the circuit have adopted the *Lynn's Food* rule, most of these cases appear to occur in contexts where the approving court has already conditionally certified a class. See, e.g., *Millan v. Cascade Water Servs., Inc.*, No. 112CV01821AWIEPG, 2016 WL 3077710, at *3 (E.D. Cal. May 31, 2016); *Otey v. Crowdflower, Inc.*, No. 12-CV-05524-JST, 2016 WL 304747, at *3 (N.D. Cal. Jan. 26, 2016).

Accordingly, the Court declines to adopt the *Lynn's Food* rule and therefore DENIES the parties' joint motion without prejudice. Plaintiff remains free to dismiss this case pursuant to Federal Rule of Civil Procedure 41(a).

Dated this 21st day of October, 2022.



David G. Estudillo
United States District Judge